# REPORT OF COMMITTEE ON SUPERVISION AND CONTROL OF PENAL INSTITUTIONS.

THE National Prison Association at its meeting in Philadelphia, October, 1902, passed this resolution, on motion of Dr. Charlton T. Lewis:

WHEREAS, An entire change in the principles and methods of supervision and control of penal institutions has recently been made by law in several states of the Union, and similar changes are now advocated in other states, by which economy and efficiency are supposed by some to be promoted, while others apprehend as a result the increase of political influence in these institutions, and injury to their best features; therefore

*Resolved,* That a committee consisting of Professor Charles R. Henderson, Dr. Frederick H. Wines, and Dr. (Professor) Francis Wayland [Mr. Eugene Smith being subsequently added to the committee] be requested to inquire into the methods of supervision and control of penal institutions provided for by the laws of the different states and of other civilized countries, and to report the facts with their views and conclusions to the next National Prison Congress.[1]

This report considers the topic of central control and supervision of penal institutions under several general heads: (1) definition: the aims and scope of central control and supervision of penal institutions; (2) the actual facts and tendencies in relation to central control and supervision of penal institutions in Europe and America; (3) a comparison of the judgments and opinions of experts and competent students, and their reasons for their positions on the subject — the weighing of the arguments; (4) such recommendations as the individual members of the committee think wise to present for discussion in the

[1] The members of the committee, being widely separated, could not hold meetings, but were compelled to arrange the plan of investigation by correspondence. Dr. Wayland, on account of the state of his health, was unable to give assistance. His eminent ability, his profound legal learning, and his philanthropic spirit would have added much to the value of our report, and we are sorry that he was obliged to decline to act. The questions proposed for investigation were formulated by the co-operation of all active members of the committee. As Dr. Wines and Mr. Eugene Smith could not be present at the Congress, and hence did not see the report, they are not responsible for its final form as presented here.

National Prison Association. Incidentally we suggest sources of information, the authorities used, the accessible materials for study, and the points upon which discussion may most profitably be concentrated.

### I. THE AIMS AND SCOPE OF CENTRAL CONTROL AND SUPERVISION OF PENAL INSTITUTIONS.

While the nature and purpose of central control and supervision can be best understood after the details are presented, yet a provisional definition will narrow the range of thought and focalize discussion on the essential matters.

1. "Central" control and supervision means (in this report) the action of the executive and specialized administrative department of the government of a commonwealth (or of the federal government) in relation to penitentiaries, reformatories, jails, workhouses, bridewells, houses of correction, and, perhaps, reform schools.

The state legislature is the body which, under the constitutions of state and nation, frames the penal code. The smaller political units do not have this power, for the municipal ordinances which are enforced by minor penalties do not relate to crime in the proper sense, and municipal councils derive their powers from the legislature of the commonwealth. This fact is a necessary part of our definition, and it is a vital consideration in the arguments which will conclude our report.

By "central" control and supervision, therefore, we mean an action of a branch of the government which makes the laws; and we exclude the action of smaller political units—as counties, townships, and municipalities; and we exclude merely private and unauthorized associations.

2. What do we mean by "control" and "supervision"? These are not the same thing in character or purpose. The resolution under which we were appointed has two distinct expressions, and the words are not meant to be exact synonyms.

The object of "supervision" is publicity, and it may include counsel and advice. The executive department of the state government cannot act wisely without information. The legislature needs exact and detailed knowledge in order to modify

penal laws, regulate the organization of administration and courts, and vote intelligently upon the necessary appropriation bills. The voting citizens need information in respect to the policy of administration, and the results of that policy, in order to guide them in deciding the general issues brought before them at elections. The officers of the institutions may, perhaps, profit by the criticisms, advice, and information which come to them from competent citizens who see and feel the consequences of their policy in business, in social intercourse, in the conduct of discharged prisoners.

The object of "control," on the other hand, is more than publicity, and it does not end in giving information and advice. Control means administrative action. It brings things to pass, or it suppresses activity which is not desired. In the last analysis it is the putting forth of the will of the people in an executive order or regulation. It is not a part of the process of education, social inquiry, reflection, discussion, and deliberation, but of volition and command, the power of the state being under its every word, decree, and regulation.

Now, it is evident that these two social functions should be clearly distinguished in discussion and controversy. For the arguments which lead naturally to making legal provision for supervision may not carry us so far as control; and the governmental machinery which secures good control may be very defective in promoting that publicity which is of the essence of "supervision," taken in the widest sense, and as used in this report. Furthermore, "supervision" and "control" do not exclude each other; they are not rivals; they are both necessary in the best order of administration. An argument on behalf of one is not in opposition to the other.

3. The specific problems which call for this investigation. The list of questions framed and sent out by your committee will show what we had in mind in our inquiry:

QUESTIONS.

A. ON STATE CONTROL OF PENAL AND REFORMATORY INSTITUTIONS.

1. Should all the penal and reformatory institutions of a state be placed under a single board of prison commissioners, with powers of direction and control, where this is not already done?

2. Should all jails and workhouses be placed under the same control?

3. What changes would you recommend in your own state law relating to the powers and duties of boards of prisons, or of state boards of charities and correction in relation to prisons, reformatories, jails, and workhouses?

B. ON REFORMS IN THE ADMINISTRATION OF JAILS AND WORKHOUSES.

4. Would a state board of control or of prison commissioners, having power to require changes in the structure and management of jails and workhouses, be desirable? Would it help to prevent and correct the notorious evils of these local prisons?

5. Would it be wise to forbid by law the retention of convicted persons in jails and to reserve jails exclusively for the detention of persons awaiting trial.

6. Should city and district workhouses, under strict prison regulations, be maintained for the punishment and correction of offenders who now usually serve short sentences in jails?

7. Is provision made in the majority of the jails in your state for separation of the sexes, and of minor offenders (under eighteen years of age) from adults?

8. Are prisoners allowed to associate with each other in the corridors, and can they converse with each other while locked in their cells?

9. Is the jailer paid for his service and for the cost of maintenance of prisoners by fees?

10. Is there any form of registration of prisoners in a book provided for that purpose required by law?

C. ON THE ADMINISTRATION OF THE PAROLE SYSTEM UNDER THE "INDETERMINATE SENTENCE."

11. Where the "indeterminate sentence" is legally authorized, what board should have power to grant conditional release and to require the recall of prisoners who violate their parole? Should it be (*a*) the board of prison managers; (*b*) a state board of control; (*c*) a state board of prison commissioners; or (*d*) a state board of pardons?

12. Should the trial judge have a hearing before such a board on the question of granting conditional release?

It will be seen that we sought to avoid abstract speculation about things in general and, positively, to go straight to the bearing of central control on vital specific problems: (1) of state penal institutions, generally recognized to be such, as state penitentiaries and reformatories; (2) of local penal institutions, as jails, workhouses, and bridewells; (3) of conditional release and the so-called "indeterminate sentence," because this involves central administrative action. We shall return to these points

and deal more closely with them in a later part of this report. They are all simply aspects of one and the same problem: What is the best mode of central state organization for the two ends of "supervision" and "control" of state institutions of punishment and correction?

II. THE ACTUAL FACTS AND TENDENCIES IN RELATION TO CENTRAL SUPERVISION AND CONTROL IN CIVILIZED COUNTRIES.

1. Your committee has considered under this head the general principles of "administrative law" in Europe and America, as they are formulated by the able writers who have distinguished themselves in this field. This is necessary because the central supervision and control of penal institutions is only one part of the executive and administrative function of every state. There are other branches of governmental activity which require such supervision and control, as: the system of free public schools, academies, and universities; the institutions of educational charity for the blind, the deaf; of medical relief and custody, as in the case of the insane, the epileptic, and the feeble-minded; the municipal functions of sanitation, police, and dealing with quasi-public corporations; the local agents of assessment and taxation; and many others.

We can best understand this problem as a part of a more general problem of state government; and in this field American scholars have already done great work. Wilson, in *The State* (published 1894), p. 542, thus speaks of our county organizations:

> Central control of local authorities exists only in the enforcement, in the regular law courts, of charters and general laws; there is nowhere any central local government board with discretionary powers of restriction or permission. . . . . Relatively to the central organs of the state, local government is the most vital part of our system; as compared either with the federal government or with local authorities, the central governments of the states lack vitality not only, but do not seem to be holding their own in point of importance. They count for much in legislation, but, so far, for very little in administration.

And on p. 519:

> The only sense in which the local units of our state organizations are *governed* at all is this, that they act under general laws which are made, not

by themselves, but by the central legislatures of the states. These laws are not executed by the central executive authorities, or under their control, but only by local authorities acting in semi-independence. They are, so to say, left to run themselves.

It must be confessed at the outset that we have few well-defined and ancient precedents for central control, so far as local prisons are concerned, and nothing but the proof of monstrous wrong will probably move our people to change their traditions and adopt a practically new principle. The persistence of the evils of county jails is compelling thoughtful people to give attention to a revolutionary proposition. The evils of permitting local authorities to administer state affairs have been felt, not only in this matter of jails, the most disgraceful feature of our penal systems, but also in our municipal governments, confessedly the worst failure of all in our American experience with government. And in both cases part of the remedy is sought (*a*) by carefully defining what are local interests and permitting local administration free scope under general laws; and (*b*) in carefully defining state interests, which must be administered by local authorities, and providing state organs of inspection and control in this sphere.

Thus Professor J. Jenks[1] voices the thought of specialists in administrative law when he recommends a municipal government board in each state, and claims for it that:

(1) it would tend to make clear the true relations between the functions of state and local governments; (2) to secure the efficient performance of state functions by local officials; (3) to furnish the public information regarding the performance of local functions in such comparative form that it would be of great service to local officials; . . . . (4) to guide, by accurate and full information, public opinion on the various questions arising in connection with city government.

It must be evident that a similar prison board would tend to secure similar good results in relation to local prisons.

Professor F. J. Goodnow, in his work on *Municipal Home Rule*, concludes a long and able inductive study of the recent decisions of courts and development of administration by citing facts in our own recent history. He says, for example:

[1] *Municipal Affairs*, September, 1898, p. 411.

As a general thing the whole educational administration has been quite highly centralized within the past half century. In New York, also, the administration of the public health of the local authorities is subjected to quite an administrative control and supervision, to be exercised by the State Public Health Board.

He also mentions the care of pauper lunatics, factory inspection, railway supervision, and local assessments and control of various quasi-public corporations. If he had written his book a little later, he could have covered our point exactly by a reference to the administrative commissioners of New York in regard to prisons.

Professor Goodnow concludes his opinion thus (pp. 271, 272):

We are therefore justified in expecting that this central administrative control over municipal corporations will, notwithstanding that it may be regarded at first blush as quite contrary to our historic and fundamental principle of local self-government or administration, be given a much wider development just so soon as the people of the country become convinced of the unwisdom of our present system of *legislative* control of local municipal matters.

In his book on *Municipal Problems*, chap. vi, Professor Goodnow gives a convincing array of facts showing how, in England, central control has rapidly elevated the system of education, improved the public health, reduced mortality, and raised the credit and financial efficiency of local governments.

These illustrations of historical facts could easily be multiplied, and they all bear us onward to one conclusion.

2. The central organization for administration of penal institutions in the United States, as exhibited in the laws of the several states of the Union. To secure and present this set of facts required considerable labor.[1] All that we can do here is briefly to summarize the most vital elements in the laws, and show their bearing on our problem, their significance, and the tendencies noted—the details being presented better in book form.

The various methods of administering prisons may be briefly indicated by describing the types shown by different states:

*a*) Thus we have examples of states in which there exists no

[1] I gratefully acknowledge the help of my students, Messrs. F. G. Cressey, J. B. Billikopf, and J. P. Valentine, who labored many hours through nine months in the library of the Law School of the University of Chicago to collect data.

strictly defined administrative agency differentiated from the executive office. The governor and his assistants are charged with more or less clearly defined powers over the prison officials, and the pardoning power has been handed down by ancient legal traditions.

*b*) Then we have states in which a *supervisory* state board of charities and corrections has been established. Occasionally limited administrative functions are assigned to these unpaid boards.

*c*) Recently a movement has been promoted which is very significant for our purpose, to secure the establishment of boards of control over state institutions—as in Kansas, Rhode Island, Wisconsin, Iowa, and Minnesota.

*d*) The next more highly specialized method is that of New York, where an administrative agency is established for prisons as for the insane, and for other interests of the people. Similar in principle are the arrangements in Massachusetts.

Looking at the history of development in a large way, this tendency to centralized and specialized administrative control seems to be logical, inevitable, and beneficial.

3. Your committee has also made use of the "ministerial regulations" for the penal institutions of Europe and America, including the rules and regulations drawn up by boards of prisons and reformatories in the United States for the conduct of officers and prisoners, so far as they bear on central supervision and control. This wider survey was made in accordance with the resolution under which we were appointed, since that resolution calls for facts of experience and method throughout the civilized world.

Fortunately the chairman of your committee had already been at work for a long time collecting and translating documents. These documents, with an explanatory introduction, are now for the first time brought together and presented in the English language. By the courtesy of our valued colleague, Dr. S. J. Barrows, of the secretary of state, and of Congress, the volume containing these documents will be accessible as *House Document 452, 1903*, second session 57th Congress, and they give

information in regard to most countries of Europe and America, including Canada and Mexico. A supplementary volume will be issued later. For details which could not properly be given in a report like this you are referred to that volume. The facts there published may be briefly summarized for our present purpose as follows:

We find that in all the advanced states of Europe the centralized control of correctional institutions is far advanced, but practically always without partisan interference with appointments. Some branch of the national ministry is charged with the duty of carrying out the provisions of the penal law in institutional treatment.

The administrative authority formulates and prints regulations which define the duties and responsibilities of all local officers, so that they can be held to exact accountability. These regulations also determine the legal mode of receiving prisoners, the system of disposing of the product of prison labor, the rules of conduct, disciplinary measures, the care of health, religious and educational provisions, and care of paroled or discharged prisoners. These regulations are enforced by means of inspectors and commissioners, and by special orders.

In regard to local prisons, corresponding to our jails and workhouses, we observe a general tendency to bring these also under central control and regulation. So far as local prisons are used for detention of witnesses and of persons awaiting trial, the powers of the local courts are respected; but the general regulations cover all. Even lockups are gradually coming under central control.[1]

These statements must suffice for the present purpose; they indicate the facts in their general form, so far as our argument is concerned.

[1] The following is a typical argument from Denmark in regard to state control of local prisons, by M. KARL GOOS, secretary of director general of prisons in Denmark (*Actes du congrès pén. int.*, 1900, Vol. IV, p. 402): "En ce qui concerne les maisons d'arret, on pourrait encore désirer que *l'influence de l'état* y fût plus directe que ce n'est le cas pour le moment, où elles sont la propriété des communes, et où la direction générale des prisons est restrainte à un pur contrôle."

III. ARGUMENTS AND OPINIONS OF EXPERTS, AND OF PERSONS WITH UNUSUAL OPPORTUNITIES FOR KNOWING THE SITUATION.

Your committee has sought to keep close to the facts and to place all the evidence before you. Part of the facts are the opinions of experts in various departments. The laws and regulations already cited are themselves such expressions of judgment. To these we now add the opinions and arguments secured by a wide correspondence in this country, and these we shall present whether they agree with our own views or contradict them.

The number of replies is not large enough for use in statistics. We do not lay much stress on the majority or minority votes. It is not so much a question of counting heads as of weighing facts and arguments. Yet the answers represent a very wide field of observation.

The answers to the questions came from the following states and territories:

Pennsylvania, Illinois, Arizona, Wisconsin, New York, Minnesota, Kentucky, New Hampshire, Colorado, Indiana, Maine, California, Kansas, Canada, Connecticut, Massachusetts, Michigan, Alabama, Ohio, Nebraska — twenty.

New England, the central states, the middle West, the Northwest, and the far West were all ably represented.

By professional experience those who answered were divided as follows:

Lawyers, 5; professor in law schools, 1; secretary of board of control, 1; members of board of control, 3; members of board of charities and correction, 3; secretary of board of charities and correction, 6; directors of prison boards, 3; wardens and superintendents, 9; chaplain, 1; general reform, 4; professors of sociology, 2.

Summary of answers:

1. In respect to state control of all penal institutions: in favor, 28; opposed, 10.

2. Should jails and workhouses be under state control: yes, 28; no, 10; doubtful, 1.

4. State control of structure and management of local prisons: in favor, 34; opposed, 3; doubtful, 1.

5. Jails to be used for detention only: in favor, 28; opposed, 8.

11. Control of paroled men: (*a*) favor local prison board, 17; (*b*) favor state board of control, 3; (*c*) favor state board of prison commissioners, 5;

(*d*) favor state board of pardons, 4; (*e*) favor trial court (various modifications), 1.

12. Favor giving trial judge a hearing in case of paroled men: yes, 17; no, 16.

1. *Central control of state establishments.*—While there is apparently a very general and increasing tendency to favor some form of central control, the difficulties and dangers may not be overlooked. A few typical expressions on this point may be cited:

"*The danger of 'politics'*—that is, of *partisan* corruption for selfish ends—is frequently expressed as a difficulty in the way of *state control.*"

The trouble in this state as everywhere is spoils politics. Systems and boards can do very little until public opinion will back their measures.—Professor Mary Roberts Smith, Leland Stanford Junior University, California.

The great danger of centralization comes from vesting control in a partisan board.—S. J. Barrows.

It could hardly be seriously affirmed, however, that the evils of partisan politics are escaped under the present decentralized system of local boards.

Our correspondents state the positive argument in several forms, thus:

Local boards strive to expand community [*i. e.*, local town] and institution interests, at the expense of consistent regard for the welfare of the larger community, the state.—C. E. Faulkner.

Mr. I. J. Wistar says:

The state board as described would be most desirable, and no uniformity of administration can be obtained without it. The central authority system, vested either in a commission or in an individual, the first being preferable for us, has been adopted in all other civilized countries, and is coeval with the vast improvements there effected in prison systems and methods.[1]

[1] Important materials are found in *Report to the Twenty-seventh General Assembly of the Investigating Committee*, printed for the Iowa legislature, 1898. In the *Bulletin of Iowa State Institutions* are articles on the subject: numbers for July and October, 1901; January, 1902; October, 1902 (discussion by F. I. HERRIOTT); *Annals of American Academy of Political and Social Sciences*, November, 1901 (L. A. BLUE); *Second Biennial Report of Board of Control of Iowa*, 1901, p. 655; *Report of State Board of Charities of Connecticut*, 1901; *New Jersey Review of Charities and Corrections*, February, 1903; *Charities*, March 21, 1903, paper by CHARLTON T. LEWIS; discussion at National Conference of Charities and Correction, 1902.

2. *Central control of local prisons.*—It is interesting to note the reasons given for questioning the wisdom of bringing local prisons under central administrative control.

Mr. L. C. Storrs sees the necessity for this measure, but says: "as long as 'county rights' are so carefully guarded I doubt if they can be" placed under state regulation.

The advantages of this method are strongly stated by the state commissioner of prisons in New York:

> The proper management of a county jail is not only a matter of concern to the inhabitants of that county, but it is a matter of concern to the entire state. Criminals do not confine their depredations within county limits. Misdemeanants who this year have been arrested, convicted, and supported at the expense of the taxpayers of a county, next year, or the year after, are quite likely to become more serious offenders, and, as inmates of state institutions, become a burden upon the taxpayers of the state at large. Hence it is both the duty and the interest of the state to insist that county jails shall be properly conducted; that they shall be so managed as to cure and diminish crime; and that they shall cease to be schools for the perfecting of a criminal education.—*Eighth Annual Report of the New York State Commission of Prisons*, 1903, pp. 79, 80; compare *Report of the Executive Committee of the Prison Association of New York*, 1902.

Mr. Brockway calls attention to the difficulty of enforcing state central control over local officials while the costs are paid out of local funds. "It is believed that the notorious evils of these prisons cannot be corrected or prevented, completely, until the state owns, controls, and supports them."

3. *Central administrative control of paroled convicts.*—First let us hear objections, one of which, if heeded, would arrest the development of the method of preparing for liberty by a regulated use of freedom:

> I have no faith in so-called "indeterminate" sentences, any more than I have in "indeterminate" convictions or "indeterminate" obligations of any kind, and I believe they have hitherto caused nothing but error and mischief. The real deterrents from crime are not severity of punishment, but its *celerity* and *certainty;* and to secure these, everything else in our criminal jurisprudence should yield, even the right of criminal appeal, which exists in no country but ours and France, and was never heard of in Pennsylvania till 1860, since which it has done more than any other thing to debauch our entire criminal system and encourage crime.—Isaac J. Wistar.

This quotation shows that the chorus of praise of the indeterminate sentence is broken by many voices, and that its friends must guard it from just criticism at every point, if they would see it succeed.

Some of the objections to parole, recall, and discharge by a state central administrative board are: It is claimed that a state administrative board acts upon *ex parte* evidence, while the trial court acts upon all the evidence. Hence the decision of a state board cannot be so just or humane as that of a court. Mr. Luther Laflin Mills is reported as saying (in favor of abolition of the Illinois indeterminate sentence law):

. . . . it is certainly an open question whether the extent of the penalty for a particular crime cannot be more justly and humanely determined by the jury trying the case, or the presiding judge, informed by witnesses as to the facts of the offense, and in frequent instances the reputation of the defendant, than by the members of a board of pardons, whose inquiry is largely limited to the mere conduct in prison of the convicted persons, and who are practically precluded, by unavoidable limitations, from making a full and judicial investigation of the facts of the crime originally involved and the antecedent history of the criminal.

A state administrative board acts executively and not judicially; and the prisoner does not have the advantage of protection of all the steps of procedure which have been developed in our civilization for the protection of personal liberty. Under the laws of procedure in a court the prisoner is treated fairly at every point:

He has been regularly convicted, after trial, of an offense with which he was duly charged. He had the right to the services of counsel to defend him. He was privileged to be confronted by the witnesses against him. He had the right to call witnesses in his behalf and to have the process of court to compel their attendance. He had the right to a speedy trial by a jury of his peers, and to an examination of them touching their qualifications to serve. The jury had to be sworn to try him fairly under the sworn testimony of witnesses. He had the right to have the law stated to the jury by the court; and he had the right to rulings by the court as to the admissibility of evidence for or against him; and he had the right at all times during his trial to except to the rulings of the court and to have those rulings reviewed by a higher court, in the event that in his counsel's opinion they were prejudicial to him.—A. M. Cohen.

But all this system of protection is swept away from him in his trial before a state administrative board.

An administrative board is not properly constituted for judicial functions: it lacks the men of legal and judicial fitness, temper, position, and training.

Partisan politics might control the administrative board, and make the sentence "either merely nominal or substantially life imprisonment."

Conduct in prison is not a good criterion for release.

A gentleman in deportment may be the worst sort of a criminal. Many honest men are anything but gentlemen in conduct. Therefore it is not safe to fix the term of imprisonment by the way an offender carries himself after conviction. A good actor imprisoned would fare well.—A. M. Cohen.

It is not fair or just to try and convict a man for an offense and to detain him in prison because his conduct there does not conform to certain standards set by an "authority."—A. M. Cohen.

Obstacles to action of courts (urged in *Illinois* by some of the prosecuting attorneys, judges, and police):

I believe its abolition [the indeterminate sentence] would save the services of one judge in this building. It would enable the state to expedite its business materially, because it could provide for the disposition of cases by prisoners pleading guilty, with the understanding they should receive a certain punishment. Now that cannot be done, and as a result every prisoner who comes up for trial makes a fight.—A. C. Barnes, assistant state's attorney, Chicago.

To these criticisms Mr. E. A. Snively, of the Illinois Board of Pardons, replies: The board can know the life-history of criminals more thoroughly than courts; that under its care young offenders have a better chance to reform and hardened offenders are held longer.[1]

The police sometimes declare that dangerous criminals, after a fair trial and conviction on a long sentence, are let loose upon the community and give to the police unusual and unnecessary difficulty in the protection of order, life, and property.

When tested by matters of fact, the theoretical objections urged above are found to be valid in actual experience; and instances are cited in which boards of pardons have released

[1] *Report of Illinois Association of State Officials*, 1903, p. 52.

notorious criminals very soon after they were fairly tried, convicted and sentenced to just penalties.

Mr. C. H. Reeve, of Indiana, cites this example:

A man convicted of a most atrocious murder [sentenced for twenty-one years] is running about here now, a most vicious and dangerous character, who is on parole, who was in prison hardly long enough to acquire the smell of the prison on him — paroled under the indeterminate sentence. The parole is most shamefully abused now, and tends to bring the law and its judgments into contempt.

*Treatment of these objections.*—There is not space here to weigh all these arguments against the indeterminate sentence. We are considering only the relation of the indeterminate-sentence law to central administration. There are many other aspects which we must omit to consider.

Now, the best answer to objections to a wise method is such an improvement in the method itself or in its practical application as to remove all reasonable grounds of criticism. Is there any known way out of these difficulties? The following recommendations have been made: Dr. S. J. Barrows writes:

The boards of managers of the separate institutions are perhaps in a better position to become familiar with individual cases in their respective institutions than a general board; but under a proper marking system the prisoner can demonstrate his fitness for conditional release in most cases.

Instead of giving the trial judge a hearing, I think it would be well to have the judiciary represented in some way in the composition of the boards of parole. It seems desirable that in paroling a prisoner the prison superintendent, the physician, and the trial judge, or some one representing judicial authority, should be represented.

Mr. W. G. Pettigrove, chairman of prison commissioners of Massachusetts, writes:

A *more even administration* of the parole system can be obtained if a single board administers it with respect to all prisons than could be possible if releases were granted by separate boards of management.

Mr. Z. R. Brockway writes on this point:

The proper scope and limit of the *courts*, in criminal trials, is to determine whether the public welfare requires imprisonment. Having adjudged and ordered imprisonment, there his function and his responsibility should cease. All the proceedings afterwards can best be directed by another tribunal — the controlling board or authority by whatever name. The place or places

of imprisonment, the treatment and training of the imprisoned criminal, his conditional and absolute release, belong more properly to the executive department than to the judicial. If, however, it is thought essential that these matters of the criminal's imprisonment, treatment, and release shall remain in the department of the judiciary, then the controlling board authority might itself be constituted a court for this special purpose.

Practically the same view is taken by Judge L. G. Kinne, speaking for the Iowa Board of Control.

The discussion of the "indeterminate sentence" by Judge J. Franklin Fort and others before the National Prison Association[1] represents the most advanced American theory. Judge Fort went far beyond the actual practice in any of our states. He would have no maximum nor minimum sentence fixed by the penal code; nor would he fix the length of sentence even by the trial court. The principle on which he would have all prisoners treated is simply and absolutely that of *cure* of the *disease* which crime is said to be; for he says:

I should have neither the minimum nor the maximum term fixed by statute and, possibly, not by the sentencing court. The proper way to cure those who are really criminals is as you *cure other diseased persons*—namely, keep them under treatment until they are cured, or, at least, so nearly cured that they may be discharged safely.

He would apply this principle to the youthful offender, and enable him to regain conditional liberty quickly; and he would apply it to the habitual criminal, so as to hold him as long as necessary to protect society, perhaps for life.

But when we come to the part of the problem which concerns this report, Judge Fort makes a recommendation which would cut at the root of the statutes thus far enacted on the subject, even in his own state. He would not leave the power to parole, recall, and discharge with the managers of the reformatory or prison; and he gives his reasons:

A board of managers of a penal institution is not always the safest body with which to leave the liberty of the prisoner. Even though it be constitutional and otherwise legal to confer upon the managers of a penal institution the power of discharge, is it not of doubtful wisdom under our form of government? . . . . If it could be certain that no conditions that were *political* and *non-judicial* would control the board of management, the power

[1] *Proceedings of Philadelphia Prison Congress*, pp. 124 ff.

might be safely lodged with them. But is not the temptation too great from the possibility of political influence which such a power to discharge carries with it, for us to hope that it will be exercised always with the sole object of promoting the good of the prisoner?

What substitute would Judge Fort offer in place of the board of managers? He proposes practically what we have already seen is really the essential feature of the European methods; he would have erected and maintained a continuous body, with a judicial head (corresponding to a European "ministry of justice") and which he calls a—

court of discharge, having judicial power of inquiry and action. . . . . I would not take from the managers their power of initiative as to release. I would require all applications for release, before expiration of term, to come through them, but, if they refused to permit an application for parole after a reasonable term of service that the court might consider it, I would give the prisoner the right of review and of a hearing before the discharge court. This court could be composed of a judge, designated by the governor, and of the several wardens of the penal institutions of the state, or a majority of them. The judge should be president of the court, and no prisoner, once discharged, should be remanded, except upon the order of the president of the discharge court, made upon verified facts, duly presented and filed as a matter of public record.

In this discussion Judge Fort has recognized the principal objections to the "indeterminate sentence," and has provided a practical working plan to meet the difficulties.

## IV. CONCLUSIONS.

The resolution under which your committee was appointed asks us to give our "views and conclusions."

1. In relation to the correctional institutions which are directly recognized as under control of state officials—as state penitentiaries, intermediate prisons, reformatories for young men, and reformatories for women—it would be in accordance with modern tendencies if all these institutions were placed under the control of an administrative agency, which is itself subject to laws requiring modern civil-service regulations; that is, laws which secure absolutely non-partisan appointments, suitable examination and probation tests, and security of tenure during efficiency. Without such conditions, and without an authorized

agency of the state for inspection, supervision, and publicity, the most zealous advocate of central control may well hesitate and dread the fearful possibilities of corruption in the present state of partisan politics in the United States, when a single board is armed with such tremendous powers. The evidence in favor of central control which is gathered from European experience comes, in the main, from countries where partisan influences are not decisive in the making of appointments. It is not fair to use this evidence in favor of introducing the same method when the spoils system reigns in selfish tyranny. Reform in the civil service must be at least an essential part of the system, and, perhaps, should come first.

This administrative agency may be a commissioner, whose duties and powers are defined by law, or may be a board of commissioners; or there may be a division of labor between a board and a directing commissioner. Into the details of the method we do not now enter, lest we confuse the issue. The principle which we wish to emphasize is that the control of a state institution is not a suitable function of the legislature, nor of courts, nor directly of a changing chief executive; but of a technically trained, permanent administrative agent.

The advantages of this system have already been developed, and may here be briefly summarized: Central administrative control is the only method by which the people of a commonwealth can be assured of a unified system of equitable execution of penalties; it is the best way of securing a uniform system of purchases of supplies and a uniform and reliable system of records and accounts. Such a central agency could best direct the placing, classification, and transfer of prisoners. As a permanent agency it would accumulate information within the state and be able to learn the lessons of experience throughout the world. Its regulations and orders would, in the highest degree, prevent scandal, oppression, and caprice.

It is fair to say that, taking European practice into account, the most enlightened governments of civilized countries are committed to the principle here advocated, with reasonable diversity in local devices and applications. It may be remem-

bered that whenever a gross evil or scandal has arisen, the natural and businesslike procedure to prevent recurrence of the wrong has been to provide suitable regulations to define and enforce the responsibility of local officials.

2. On the second point—the correction of abuses and the improvement of conditions of *local* prisons—we have reached the following conclusions:

The flagrant, persistent, and notorious physical and moral evils of local prisons are, as a long history proves, incurable under any form of local control, whether by courts, sheriffs, county commissioners, or other county or municipal authority. England, the mother-country, never succeeded in carrying out the reform measures proposed by John Howard in the eighteenth century until it introduced central control of all its local prisons. The conditions in our country are not in essential particulars different.

Mere supervision and publicity, by means of visitors, is not an adequate remedy for the abuses, nor an adequate method of sustained and enlightened administration. Experience demonstrates that locally elected officials will not regard the advice of visitors who have no legal power to make and enforce regulations. Parsimony and ignorance mock at the lessons of the world's best wisdom and the world's highest law of humanity.

So far as county jails provide separate departments for the detention of persons awaiting trial or held as witnesses, they are, of course, instruments of the court and should respect the orders of courts in relation to such subjects. This is provided for in the European national regulations. But when persons are once convicted and sentenced to punishment under the penal law of a state, then the state itself should provide a method of administering its penalties down to the most minute details. Otherwise there will be the crying injustice of having as many systems of penalty as there are jailers and sheriffs in the commonwealth.

That which is true of county prisons is also true of city and county workhouses, and the argument need not be repeated.

3. Lastly we recommend that all convicts who are paroled and released on condition of good behavior should be held under the

control of the same central agency of state administration. The sentence of the court is not completely executed until the last hour of the period for which the convict is held answerable to the prison authorities. Wherever, in Europe, convicts are conditionally released they remain in custody of the central ministry of justice, a judicial and administrative agency. Of course, the officers and agents of each prison should always, as now, be the persons charged with the immediate care of each paroled convict; but the final decision should still rest with the central office.

4. *Supervision.*—A few words of interpretation and explanation seem necessary to prevent misunderstanding.

Your committee has made no recommendations in relation to "supervision," because that is of itself a large and important subject. We believe in supervision, both by the state itself and by the regulated, legally authorized agency of citizens and voluntary associations. In a free state and under republican institutions the cordial and sympathetic co-operation of citizens, under suitable regulation, is highly useful and desirable. With increasing wealth, leisure, intelligence, and philanthropy the government can count on a wiser and stronger service from competent and devoted men and women.

Among the most conspicuous and promising methods of organizing and directing this voluntary service of "honor offices" we mention: The unpaid state boards of charities and correction already known in many of our commonwealths; local committees of visitors, authorized by law to inspect and report to the governor or legislature, to instruct and inspire public opinion, and to co-operate with officials in the care of prisoners and their families; prison societies, as in New York, for the study of prison science, for visiting and inspecting establishments of correction, and for directing the humane efforts of the community into the most useful channels.

To this we may add the state conferences of charities and correction, whose committees and representatives may render valuable service in the prisons and in connection with the formation of public opinion and its embodiment in legislation.